

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CITY OF SUMMIT, NEW JERSEY	)	File No. 0001869696
	)	
Application and Request for Waiver to Permit	)	
Public Safety Use of Frequency Band 470-480	)	
MHz in Summit, New Jersey	)	

**ORDER**

**Adopted: October 12, 2005**

**Released: October 13, 2005**

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. We have before us an application and a waiver request<sup>1</sup> filed by the City of Summit, New Jersey, (“Summit” or “the City”) for authority to operate a public safety radio system on eight UHF frequencies.<sup>2</sup> The frequencies are designated under Part 22 of the Commission’s Rules as paging control and trunked mobile channels in the New York City/northern New Jersey area. Pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),<sup>3</sup> and Section 1.925 of the Commissions Rules,<sup>4</sup> Summit seeks a waiver of Sections 22.7, 22.501, 22.621, 22.651 and 90.311 of the Commission’s Rules<sup>5</sup> to permit public safety use of these currently unassigned frequencies.<sup>6</sup> For the reasons stated herein, we grant Summit’s waiver request.

**II. BACKGROUND**

2. Summit, located in Union County, New Jersey, is a city of 21,000 residents.<sup>7</sup> Summit is a hub of rail and highway infrastructure through which thousands of commuters travel daily.<sup>8</sup> The growing

<sup>1</sup> See FCC File No. 0001869696, City of Summit (filed Sept. 14, 2004) (Request), as amended on October 21, 2004 (October 21, 2004 Amendment) and October 26, 2004 (October 26, 2004 Amendment). The Request sought use of frequency pairs 476/479.0375, 476/479.1375, and 476/479.1875 MHz. The October 21, 2004 Amendment added frequency pair 476/479.2125 MHz.

<sup>2</sup> Frequencies in the 300 MHz to 3 GHz range are Ultra High Frequencies (UHF), but land mobile frequencies in the 450-512 MHz range are sometimes known as the land mobile “UHF band.” In this *Order*, references to UHF mean 450-512 MHz. See, e.g., Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

<sup>3</sup> 47 U.S.C. § 337(c).

<sup>4</sup> 47 C.F.R. § 1.925.

<sup>5</sup> 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.311. See Request at 3.

<sup>6</sup> See Request at 1.

<sup>7</sup> *Id.* at 2-3.

number of residents and commuters impose increasing responsibilities on Summit's law enforcement, fire, and emergency services.<sup>9</sup> Summit states that its existing, outdated communications system on Stations KCZ906, Summit, New Jersey, and WIK881, Summit, New Jersey, is inadequate to meet these demands.<sup>10</sup>

3. Summit asserts that access to the requested Part 22 frequencies is critical to expand the coverage and transmission quality of its public safety communications, which are presently confined to a limited number of frequencies in different bands.<sup>11</sup> A new system will facilitate interoperability between Summit's first responders, such as the City's Police, Fire, and Emergency Medical Service, and its other public service providers, as well as interoperability with over forty surrounding communities, in addition to State and county agencies.<sup>12</sup> Summit proposes to combine the UHF frequency pair already licensed to Station WIK881 with the four frequency pairs sought in the current application to construct and implement a five-pair trunked radio system.<sup>13</sup> Summit states that the new system will speed emergency response and improve the delivery of all public services.<sup>14</sup> Because the requested frequencies are not designated for public safety use, Summit requires a waiver of Sections 22.7, 22.501, 22.621, 22.651, 90.303, and 90.311 of the Commission's Rules.<sup>15</sup> Summit also states that if it obtains the requested UHF frequency pairs, it will relinquish frequency pair 154.1750/154.3550 MHz to the extent it is not required for interoperability with other entities.<sup>16</sup>

4. On November 17, 2004, the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division (Division) sought comment on Summit's application and waiver request.<sup>17</sup>

The Division received comments from the County of Westchester, New York (Westchester),<sup>18</sup> which  
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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2. Specifically, Station KCZ906 is authorized to use two frequencies in the 150-174 MHz band and one UHF frequency, and Station WIK881 is authorized to use one UHF frequency pair.

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.303, 90.311. Section 22.7 limits eligibility to operate on Part 22 frequencies to common (*i.e.*, commercial) carriers. Section 22.501 defines the scope of the licensing and operation of the public paging and radiotelephone service. Section 22.621 requires the use of point-to-multipoint operation on four of the requested frequencies. Section 22.651 requires the use of trunked mobile operations on the other four frequencies requested. *But see* 47 C.F.R. § 22.655 (the FCC is redesignating public mobile channels in the 470-512 MHz range from trunked mobile operation to point-to-multipoint operation as the demand for trunked mobile service decreases). Section 90.303 provides frequencies available for assignment to land mobile systems, and references Section 90.311, which excludes frequencies in the 470-512 MHz range from assignment to private land mobile radio applicants if the frequencies are allocated for services under Part 22.

<sup>16</sup> Request at 11 n.1. Frequency pair 154.1750/154.3550 MHz is on Summit's license for Station KCZ906.

<sup>17</sup> *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the City of Summit, New Jersey to Operate a County-Wide Public Safety Radio System Utilizing Eight Part 22 UHF Trunked Mobile Frequencies, *Public Notice*, 19 FCC Rcd 22585 (WTB PSCID 2004). Comments were due on December 2, 2004, and reply comments were due on December 13, 2004.

<sup>18</sup> *See* Comments of the County of Westchester, New York (filed Dec. 2, 2004) (Westchester Comments). Summit filed reply comments. *See* Reply Comments of the Summit Police Department (filed Dec. 13, 2004).

notes that Summit seeks to use frequency pair 476/479.2125 MHz, which is licensed to Westchester under Call Sign WQBR539, Yonkers, New York.<sup>19</sup> Westchester states that it has no objection to Summit's application, and endorses Summit's proposal.<sup>20</sup>

### III. DISCUSSION

5. Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;
- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.<sup>21</sup>

6. Public safety services are services whose principal purpose is to protect the safety of life, health, or property, provided by governmental entities whose primary mission is the provision of such services, or by non-governmental entities authorized by such a governmental entity, and that are not made commercially available to the public.<sup>22</sup> Based on the record before us, we conclude that Summit is an entity providing public safety services.<sup>23</sup> We therefore move to examining whether Summit meets the statutory requirements supporting a waiver under Section 337(c) of the Act.

7. *Immediate availability of public safety spectrum.* Summit contends no public safety spectrum is immediately available that would support its proposed radio system.<sup>24</sup> In support of its contention, Summit incorporates by reference two reports compiled by its engineering consultant in association with previous Section 337 requests for non-public safety spectrum in the New York City area.<sup>25</sup> The reports make the following observations:

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<sup>19</sup> See Westchester Comments at 1.

<sup>20</sup> *Id.* at 1, 3.

<sup>21</sup> See 47 U.S.C. § 337(c).

<sup>22</sup> See 47 U.S.C. § 337(f).

<sup>23</sup> See Nassau County Police Department, *Memorandum Opinion and Order*, 17 FCC Rcd 14252, 14258 ¶ 11 (WTB PSPWD 2002).

<sup>24</sup> See Request at 6.

<sup>25</sup> FCC File No. 0001869696, Letter dated Sept. 13, 2004 from Emil Vogel, Vogel Consulting Group, Inc. (Vogel), to Public Safety and Critical Infrastructure Division, Federal Communications Commission (Vogel Letter). Summit incorporates by reference technical analyses performed by Vogel in connection with applications filed by two nearby public safety agencies in northeastern New Jersey. *Id.* at 1. See FCC File No. 0001628636, Amended Analysis of Frequency Availability for Jersey City, New Jersey Public Safety Communications, prepared by Vogel (dated May 10, 2002); and FCC File No. 0001535270, Analysis of Frequency Availability for Fort Lee, New Jersey Public Safety Communications prepared by Vogel (dated August, 2001). The analyses for (continued....)

- The 150-160 MHz band has no available frequencies that meet the requirements of Summit;
- The 450-466 MHz and 470-480 MHz bands have no available frequencies that meet the requirements of Summit. The bands do contain 6.25 kHz bandwidth channels, but these frequencies are not “available” from a practical standpoint because no manufacturer currently offers 6.25 kHz equipment;
- The 764-776 and 794-806 MHz bands, while designated for public safety use, are not immediately available for Summit because existing television broadcast stations use these frequencies;
- The Association of Public-Safety Communications Officials International, Inc. (APCO) New Jersey Frequency Advisor has stated that there are no clear, usable channels in the 806-821 MHz and 851-866 MHz bands;
- The 821-824/866-869 MHz bands have no wide-area channels available to Summit, according to a survey of the National Public Safety Planning Advisory Committee.<sup>26</sup>

We concur with Summit’s contentions and conclude that no other public safety spectrum is immediately available.

8. *Technical feasibility of requested use without causing harmful interference.* Summit’s proposed frequencies are in the 470-480 MHz band, which is allocated on a geographically-shared basis with television broadcast stations.<sup>27</sup> In the New York City metropolitan area, the Commission regulates the eight requested frequencies under Part 22 of its Rules.<sup>28</sup> Specifically, the Commission has designated four of the frequencies requested herein for point-to-multipoint transmitters used to support transmitters that provide public mobile service, *i.e.*, paging control.<sup>29</sup> The Commission has designated the other four frequencies requested herein for trunked mobile operations.<sup>30</sup> Summit provided an analysis of potential interference that concluded that use of these channels by Summit is technically feasible and will not cause

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Jersey City and Fort Lee demonstrate that no public safety spectrum is immediately available. Waiver requests for both applications were granted in August 2004. *See* Seven Public Safety Agencies in the New York Metropolitan Area, *Order*, 19 FCC Rcd 15355 (WTB PSCID 2004).

<sup>26</sup> Request at 6.

<sup>27</sup> Frequencies in the 470-512 MHz band, normally assigned to UHF Television Channels 14 through 20, were made available for land mobile radio use in eleven cities in the early 1970s in the “UHF-TV Sharing” proceeding. *See* Land Mobile Use of TV Channels 14 through 20, *Report and Order*, Docket No. 18261, 23 FCC 2d 325 (1970).

<sup>28</sup> 47 C.F.R. § 22.1 *et. seq.*

<sup>29</sup> *See* 47 C.F.R. §§ 22.621, 22.627.

<sup>30</sup> *See* 47 C.F.R. §§ 22.651, 22.655.

harmful interference to other spectrum users entitled to protection from interference.<sup>31</sup> In addition, Summit's Commission-certified frequency coordinator concludes that the proposed radio system will not interfere with other licensed and proposed public safety systems.<sup>32</sup> Summit also meets the spacing requirements for co-channel and adjacent channel TV stations.<sup>33</sup> We believe Summit has shown that the operational and technical parameters of its proposed system meet the Commission's requirements for interference protection to incumbent public safety licensees. Moreover, we note that the potential for interference to adjacent channel users is further diminished because Summit will use 12.5 kHz bandwidth equipment on frequencies designated under Part 22 for 20 kHz bandwidth.<sup>34</sup> There will no spectrum overlap with adjacent channel users<sup>35</sup> because they utilize 12.5 kHz bandwidth channels and are spaced 12.5 kHz from various channels sought by Summit. We therefore agree that Summit's proposed system is technically feasible and will not cause harmful interference to other users.

9. *Public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area.* As Summit notes, the frequencies it proposes to use in its public safety communications system are within a frequency band where public safety land mobile radio operations are authorized, and are currently being used by other public safety agencies in the New York City metropolitan area (e.g., the Union County Prosecutor and County Police, and the New York City, Nassau County, and Bergen County Police Departments).<sup>36</sup> We therefore find that the use of the unassigned frequency pairs for the provision of the proposed public safety services is consistent with other allocations for the provision of such services in the geographic area specified in the application. Moreover, because other agencies in the New York City metropolitan area are using these frequencies, we believe that granting the request may promote interoperability among public safety community in this area.

10. *The frequencies have been allocated for non-public safety use for more than two years.* The Commission allocated these frequencies for non-public safety use in 1994.<sup>37</sup> Thus, these frequencies have been allocated for their present use for more than two years.

11. *Granting this application is consistent with the public interest.* We believe Summit's filings demonstrate that access to additional spectrum is needed in order to promote effective public safety communications. As described by Summit, granting the applications and waiver request would be in the public interest as it will cure deficiencies in the existing public safety radio systems and provide interoperability among Summit's fire, police, EMS, and other departments.<sup>38</sup> The proposed system

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<sup>31</sup> See FCC File No. 0001869696, Analysis of the Potential for Co-Channel Interference Between Summit, NJ and Westchester County, NY, prepared by the Vogel Consulting Group, Inc., dated October, 2004; Vogel Letter. Signal strength studies were conducted to show that no interference is anticipated between Summit and co-channel licensee Syosset, New York Fire District. The letter also states that adjacent channel licensees Jersey City, the Borough of Fort Lee, and the City of Bayonne, New Jersey will be afforded adequate protection. Vogel Letter at 1-2.

<sup>32</sup> See Letter dated Oct. 18, 2004 from Lieutenant Anthony Melia, APCO New Jersey Frequency Advisor, to Michael Wilhelm, Chief, Public Safety and Private Wireless [sic] Division, Federal Communications Commission.

<sup>33</sup> Request at 6-7; see also Vogel Letter at 2.

<sup>34</sup> Request at 2; see 47 C.F.R. §§ 22.621, 22.651.

<sup>35</sup> See adjacent channel licensees identified in n.31.

<sup>36</sup> Request at 8.

<sup>37</sup> See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket 92-115, 9 FCC Rcd 6513 (1994).

<sup>38</sup> Request at 9.

should assist the State of New Jersey's initiative to increase domestic preparedness through pervasive interoperability.<sup>39</sup> We believe that it would further the public interest by affording Summit's public safety community the necessary spectrum to allow it to protect the lives and property in its care. Indeed, Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of ... radio communication."<sup>40</sup> We also find that Summit's commitment to relinquish frequency pair 154.1750/154.3550 MHz serves the public interest by easing the congestion on these shared channels in the New York City metropolitan area. Additionally, we find it significant that granting the instant request may promote interoperability capability among the public safety community in the New York City metropolitan area.

#### IV. CONCLUSION

12. We conclude that Summit's waiver request satisfies the criteria set forth under Section 337(c) of the Act to obtain a grant of its application to operate a public safety communications system on frequencies in the 470-480 MHz band.<sup>41</sup> We therefore grant Summit's request.<sup>42</sup>

#### V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), the request for waiver associated with the captioned application filed by the City of Summit, New Jersey on September 14, 2004, as amended, to use frequencies 476/479.0375, 476/479.1375, 476/479.1875 MHz, and 476/479.2125 MHz for public safety services as requested in the captioned application **IS GRANTED**.

14. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 337(c), that File No. 0001869696 **SHALL BE PROCESSED** consistent with this *Order* and the Commission's Rules.

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<sup>39</sup> *Id.*; see, e.g., Attorney General's Office of the State of New Jersey, *Order*, DA 05-1609, ¶ 3 (WTB PSCID rel. June 7, 2005).

<sup>40</sup> 47 U.S.C. § 151.

<sup>41</sup> In view of the conclusion that a waiver grant for Summit is warranted under Section 337(c) of the Act, we need not reach the question of whether the Summit's waiver request should be granted under Section 1.925(b)(3) of the Commission's Rules.

<sup>42</sup> We note, however, that Summit's current licenses authorize only conventional operations. Before Summit may trunk its currently authorized channels with its new channels, it must request and obtain authorization to do so. See 47 C.F.R. § 90.187.

15. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0131, 0331.

FEDERAL COMMUNICATIONS COMMISSION

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